

Notice of Allowability	Application No.	Applicant(s)	
	09/804,060	MOCKEL ET AL.	
	Examiner	Art Unit	
	Kathleen M Kerr	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3/24/04.
2. ☒ The allowed claim(s) is/are 1,8,9,26 and 27.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>4/23/03</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |


Kathleen M Kerr
Examiner
Art Unit: 1652

DETAILED ACTION

Application Status

1. In response to the previous Office action, a non-Final rejection (mailed on December 24, 2003), Applicants filed an amendment and response received on March 24, 2004. Said amendment cancelled Claims 24-25 and amended Claims 1, 21, and 26. Claims 1, 8, 9, 21, and 26-28 are pending in the instant Office action and will be examined herein.

Priority

2. As previously noted, the instant application is granted the benefit of priority for the foreign application 100 42 740.5 filed in Germany on August 31, 2000 and for the foreign application 101 08 463.3 filed in Germany on February 22, 2001. A certified foreign translation of 100 42 740.5 was filed on May 14, 2003; said document discloses the claimed invention.

Information Disclosure Statement

3. The information disclosure statement filed on April 29, 2003 has been reviewed, and its references have been considered as shown by the Examiner's initials next to each citation on the attached copy. Reference "LR" has been crossed out as a duplicate. Reference "UR" has been correctly cited under foreign patent documents. And reference "XR" has been crossed out because search report references are not printed on the face of a patent.

Drawings

4. As previously noted, the drawings have been approved by the Draftsmen and are, therefore, entered as formal drawings acceptable for publication upon the identification of allowable subject matter.

Withdrawn - Claim Objections

5. Previous rejection of Claim 1 for having improper form of a Markush group is withdrawn by virtue of Applicant's amendment.

Withdrawn - Claim Rejections - 35 U.S.C. § 112

6. Previous rejection of Claim 21 under 35 U.S.C. § 112, second paragraph, as being indefinite for the phrase "the fragment of at least 30 consecutive nucleotides" is withdrawn by virtue of Applicant's cancellation of said claim.

7. Previous rejection of Claims 24-28 under 35 U.S.C. § 112, second paragraph, as being indefinite for the phrase "sensor kinase activity" is withdrawn by virtue of Applicant's cancellation and/or amendment of said claims.

8. Previous rejection of Claims 25-28 under 35 U.S.C. § 112, second paragraph, as being indefinite for being confusing as to how hybridizing to the complement of Claim 1, item c (complement itself), would encode a protein, let alone a sensor kinase protein, is withdrawn by virtue of Applicant's cancellation and/or amendment of said claims.

9. Previous rejection of Claims 24-28 under 35 U.S.C. § 112, first paragraph, written description, is withdrawn by virtue of Applicant's cancellation and/or amendment of said claims; pending claims are drawn to exact sequences (directly or by virtue of degeneracy).

10. Previous rejection of Claims 24-28 under 35 U.S.C. § 112, first paragraph, scope of enablement, is withdrawn by virtue of Applicant's cancellation and/or amendment of said claims; pending claims are drawn to exact sequences (directly or by virtue of degeneracy).

EXAMINER'S AMENDMENT

11. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Thomas Cawley on May 24, 2004.

Amendments to the Claims

12. The claims have been amended as follows:

a) Cancel Claim 28.

b) Rewrite Claims 1, 9, 26, and 27 as follows:

---1. An isolated nucleic acid fragment comprising a nucleotide sequence selected from the group consisting of:

a) a nucleotide sequence as set forth in SEQ ID NO:1;

b) a nucleotide sequence encoding a polypeptide as forth in SEQ ID NO:2; and

c) a nucleotide sequence complementary to (a) or (b).

9. An internal fragment of the citA gene wherein said internal fragment consists of SEQ ID NO:3.

26. A vector comprising a nucleic acid fragment of Claim 1.

27. An *E. coli* host cell comprising the vector of claim 26. ---

Other Art of Record

13. The following is made of record herein or is noted in summary:

- a) WO 01/00842 (Pompejus *et al.* - see IDS as corrected by the Examiner) published on January 4, 2001 (filed on June 23, 2000) teaches a fragment of SEQ ID NO:1, said fragment is not SEQ ID NO:3.
- b) WO 02/18427 (Mockel *et al.*) is an international application related to the instant application having a filing date rendering it not available as prior art.
- c) DE 10128510 (Farwick *et al.*) is also a related application having a publication date rendering it not available as prior art.
- d) GenBank AP005274 teaches a *C. glutamicum* genome sequence; its public availability is June 5, 2002 rendering it not available as prior art.
- e) EP 1108790 and related USPAP 20020197605 (both Nakagawa *et al.*) (see PTO-892's from prosecution) have publication or filing dates rendering them not available as prior art.

Examiner's Comment

14. Previously filed generic host cell claims have been cancelled and/or amended by Examiner's amendment due to a lack of support in the disclosure as originally filed. *E. coli* host cells have support in the specification, particularly the Examples wherein a *C. glutamicum* library is made in *E. coli*.

Conclusion

15. Claims 1, 8, 9, and 26-27 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (571) 272-0931. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Examiner
Art Unit 1652

May 25, 2004